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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA  
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13 DEREK ANTHONY COSTANTINO, ) 3:10-cv-0078-HDM-WGC  
14 Plaintiff, )  
15 vs. ) ORDER  
16 STATE OF NEVADA, EX REL., et al., )  
17 Defendants. )  
18 \_\_\_\_\_ )

19 Before the court is the November 3, 2011 Report and  
20 Recommendation of the United States Magistrate Judge (#45) on  
21 defendants' motion to dismiss (#33). The magistrate judge  
22 recommends that this court enter an order dismissing plaintiff's  
23 official capacity damages claims based on Eleventh Amendment  
24 immunity and denying the remainder of defendants' motion to  
25 dismiss. In addition, the magistrate judge recommends that  
26 plaintiff be given thirty (30) days within which to served  
27 Defendant Bryant or he will be dismissed without prejudice pursuant  
28 to Rule 4(m).

1 On November 21, 2011, the defendants filed objections to the  
2 report and recommendation (#46). On December 12, 2011, the  
3 plaintiff filed a response (#53) to the defendants' objections.

4 On a motion to dismiss, the court reviews a complaint to see  
5 if, on its face, it contains sufficient factual matter, accepted as  
6 true, to state a plausible claim for relief. *Ashcroft v. Iqbal*, 129  
7 S. Ct. 1937, 1949 (2009). Where a plaintiff appears pro se, the  
8 court construes the pleadings liberally and "afford[s the]  
9 plaintiff the benefit of any doubt." *Karim-Panahi v. L.A. Police*  
10 *Dep't*, 839 F.2d 621, 623 (9th Cir. 1988).

11 With these standards in mind, the court has considered the  
12 pleadings and memoranda of the parties and other relevant matters  
13 of record. It has made a review and determination in accordance  
14 with the requirements of 28 U.S.C. § 636 and applicable case law.  
15 Therefore, and good cause appearing, the defendants' motion to  
16 dismiss (#33) the plaintiff's claims for damages against the  
17 defendants in their official capacities is granted. In all other  
18 respects, the defendants' motion to dismiss is denied. It is  
19 further ordered that plaintiff be given thirty (30) days within  
20 which to serve Defendant Bryant or he will be dismissed without  
21 prejudice pursuant to Rule 4(m).

22 **IT IS SO ORDERED.**

23 DATED: This 9th day of January, 2012.

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26 UNITED STATES DISTRICT JUDGE  
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